

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**JAMES AND KRISTIN J. BRULL,**

**Plaintiffs,**

**V.**

**UNITED STATES OF AMERICA,**

**Defendant.**

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**Civil Action No.**

**COMPLAINT**

Plaintiffs James and Kristin J. Brull, by and through their undersigned counsel, as and for their complaint against Defendant United States of America, allege as follows:

**NATURE OF ACTION**

1. This is an action for the recovery of federal income tax erroneously or illegally withheld by the Internal Revenue Service (“IRS”).

**JURISDICTION AND VENUE**

2. Jurisdiction over the parties and subject matter is conferred upon this Court by 28 U.S.C. § 1340 (a question arising under the Internal Revenue Code); and 26 U.S.C § 7422(a) and 28 U.S.C. §1346(a)(1) (suit for refund of taxes). Venue is proper in this district pursuant to 28 U.S.C. 1391(b).

**PARTIES**

3. Plaintiffs are individual taxpayers residing in the County of Dallas, State of Texas.

4. Defendant United States of America has consented to suit under 28 U.S.C. § 1346(a) and may be served with process by personal service of a copy of the summons and the complaint to Honorable Leigha Simonton, United States Attorney for the Northern District of Texas, 1100

Commerce Street, Dallas, Texas 75242; by sending a copy of the summons and the complaint by registered or certified mail to Honorable Merrick B. Garland, Attorney General of the United States, c/o United States Department of Justice, Tenth Street and Constitution Avenue N.W., Washington, D.C. 20530; and by sending a copy of the summons and the complaint by registered or certified mail to Honorable Daniel Werfel, Commissioner c/o Office of the Commissioner, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224-0002.

### **FACTS**

5. On or around May 6, 2020, Plaintiffs filed a timely refund claim (“Claim for Refund”) on their 2017 federal income tax return with the IRS Service Center in Austin, Texas.

6. Plaintiffs complied with the requirements of 26 C.F.R. § 301.6402-3(a)(1) and made their Claim for Refund on an Amended U.S. Individual Income Tax Return (“Form 1040X”).

7. The Form 1040X, reflecting the Claim for Refund, was received by the IRS on or about October 10, 2020. (*See Exhibit 1*).

8. Plaintiffs’ 2017 amended tax return resulted in a refund claim of \$49,104 due to Plaintiffs.

9. Plaintiff James Brull was a shareholder in Centroid Systems, Inc. (“Centroid”), (38-3366128), a S Corporation, for tax year 2017.

10. On or about April 14, 2020, Centroid’s Certified Public Accountants (“CPAs”) mailed Centroid’s amended S Corporation return to the IRS.

11. Subsequently, the IRS requested another signed copy of the amended S Corporation return for Centroid. In response to this request, Centroid’s CPAs submitted another signed copy of the amended S Corporation return.

12. After submission of the second S Corporation return, the IRS informed Centroid that they received the second copy but were unable to locate it, and needed another copy, which the corporation's CPAs provided on June 3, 2021.

13. The copy provided on June 3, 2021, was the third signed copy of the amended corporate return sent to the IRS.

14. In February 2023, an IRS representative confirmed that the amended S Corporation return had been processed without any changes to the return.

15. On or about March 15, 2021, Plaintiffs received a LTR 916C from the IRS disallowing Plaintiffs' claim for refund (**Exhibit 1**) indicating that the claim could not be processed because the corporate return for Centroid, which contained information about James Brull's K-1, had not been filed.

16. The IRS sent LTR 916C, and continued to refuse to process Plaintiffs' refund claim, despite have been previously provided three copies of Centroid's amended return. (*See Exhibit 1.*)

17. Since mailing their amended return, Plaintiffs have made several attempts to check the status of the return. However, Plaintiffs have not received confirmation from the IRS that their 2017 amended return was processed.

18. After receiving the March 15, 2021 letter from the IRS indicating that Centroid had not filed their amended return, Plaintiffs asked Centroid about the return and was assured by the company representatives that the amended return had been timely filed – multiple times.

19. Despite timely filings by Plaintiffs and Centroid, Plaintiffs have not received the refund associated with their 2017 amended tax return. Upon information and belief, the other shareholders of Centroid had their refund claims processed and approved.

20. The IRS erred in not processing Plaintiffs' Claim for Refund and not issuing the associated refund to Plaintiffs.

21. The IRS has received multiple copies of Centroid's corporate return, with the third copy being sent on or about June 3, 2021.

22. Plaintiffs are entitled to a refund in the amount of \$49,104 plus statutory interest according to law.

**JURY DEMAND**

23. Plaintiffs hereby demands a jury trial on all issues so triable.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray:

1. The Court find that federal income tax was erroneously or illegally withheld from Plaintiffs in the amount of \$49,104 plus statutory interest according to law.

3. That the Court enter judgment against the United States in the amount of \$49,104 plus statutory interest according to law.

4. That the Court award Plaintiffs their costs and attorneys' fees; and

5. That the Court award other and further relief, at law and in equity, to which Plaintiffs may show themselves justly entitled.

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*Respectfully submitted,*

GRAY REED

By : /s/ Joshua D. Smeltzer  
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Texas State Bar No. 24133857  
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**ATTORNEYS FOR PLAINTIFFS**

**CERTIFICATE OF SERVICE**

I hereby certify that on March 15, 2023, the foregoing document was served on counsel for the United States of America via the Court's electronic filing system.

/s/ Joshua Smeltzer  
JOSHUA D. SMELTZER



Department of the Treasury  
Internal Revenue Service

IRS

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In reply refer to: 0545908320  
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JAMES & KRISTIN J BRULL  
[REDACTED]  
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CERTIFIED MAIL

Taxpayer identification number: [REDACTED]  
Kind of tax: Individual 1040X  
Date claims received: Aug. 10, 2020  
Tax periods: Dec. 31, 2017

Dear Taxpayer:

Thank you for your 1040X. We cannot process your claim for the tax periods listed above. Your Form 1040X was filed to include an amended Schedule K-1. However, although a copy for the schedule K-1 has been provided by you, a review of the business return for EIN 38-3366128 indicates that an amended return for the business has not been filed.

Unless and amended return is filed for the business and we have a record of it being filed, Form 1040X cannot be considered at this time since the amended changes cannot be verified.

Find tax forms or publications by visiting [www.irs.gov/forms-pubs](http://www.irs.gov/forms-pubs) or by calling 800-TAX-FORM (800-829-3676).

If you have questions, you can call 0922.

If you prefer, you can write to us at the address at the top of the first page of this letter.

The Taxpayer Advocate Service (TAS) is an independent organization within the IRS that helps taxpayers and protects taxpayers' rights. TAS can offer you help if your tax problem is causing a financial difficulty, you've tried but been unable to resolve your issue with the IRS, or you believe an IRS system, process, or procedure isn't working as it should. If you qualify for TAS assistance, which is always free, TAS will do everything possible to help you. To learn more, visit [www.taxpayeradvocate.irs.gov](http://www.taxpayeradvocate.irs.gov) or call 877-777-4778.

Tax professionals who are independent from the IRS may be able to help you.

Low Income Taxpayer Clinics (LITCs) can represent low-income persons before the IRS or in court. LITCs can also help persons who speak

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JAMES & KRISTIN J BRULL  
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English as a second language. Any services provided by an LITC must be for free or a small fee. To find an LITC near you:

- Go to [www.taxpayeradvocate.irs.gov/litcmap](http://www.taxpayeradvocate.irs.gov/litcmap);
- Download IRS Publication 4134, Low Income Taxpayer Clinic List, available at [www.irs.gov/forms-pubs](http://www.irs.gov/forms-pubs); or
- Call the IRS toll-free at 800-829-3676 and ask for a copy of Publication 4134.

State bar associations, state or local societies of accountants or enrolled agents, or other nonprofit tax professional organizations may also be able to provide referrals.

When you write, include a copy of this letter, and provide your telephone number and the hours we can reach you in the spaces below.

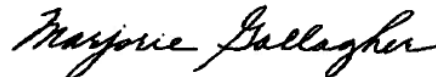
Telephone number ( ) \_\_\_\_\_ Hours \_\_\_\_\_

Keep a copy of this letter for your records.

Thank you for your cooperation.

A copy of this letter and any referenced enclosures have been forwarded to your authorized representative(s).

Sincerely yours,



Marjorie Gallagher  
Operation 2 Manager

Enclosures:  
Copy of this letter  
Publication 1  
Envelope  
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